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MEMORANDUM

September 1, 2022

To: TRIBAL HOUSING CLIENTS

From: Ed Clay Goodman & Cari Baermann
HOBBS, STRAUS, DEAN & WALKER, LLP

Re: *NAIHC Legislative Committee Meeting*

This memorandum provides a synthesis of information presented during the Native American Indian Housing Council (NAIHC) Legislative Committee meeting held on September 1, 2022. NAIHC Executive Director Tony Walters presided over the Legislative Committee meeting.

I. NAIHC Legislative Committee Meeting

a. *Legislative Update*

Democrat Mary Peltola recently won a special congressional election in Alaska for a seat in the U.S. House of Representatives. Representative-Elect Peltola will be the first Alaskan Native to serve as a lawmaker in Congress for the State and will hold the seat for the four months remaining in the late Congressman Young's term. She will also be running for a full term for the same seat in the November 8, 2022 general election.

NAHASDA reauthorization efforts are continuing. Two versions of the NAHASDA bill have been introduced: S. 2264 and H.R. 5195. Key provisions of the Senate version of the bill (S. 2264) include:

- Authorizing Native American Housing Assistance and Self-Determination Reauthorization Act (NAHASDA) programs through 2032;
- Creating an Assistant Secretary for Indian Housing at U.S. Department of Housing and Urban development (HUD);
- Re-establishing a Drug Elimination Program for tribal communities;
- Consolidating the environmental review requirements for housing;
- Recognizing tribal sovereignty to govern maximum rent requirements;
- Allowing tribal housing programs to access the Indian Health Service (IHS) sanitation funding;
- Making tribes eligible for HUD Housing Counseling grants;

- Including HUD-Veterans Affairs Supportive Housing (HUD-VASH) provisions; and
- Leveraging/using NAHASDA funding as a match for other federal grants.

The Senate bill (S. 2264) has ten, bipartisan co-sponsors. It has passed out of the Senate Committee on Indian Affairs (SCIA), and the next step is a vote by the full Senate. Additionally, the S. 2264 bill version of NAHASDA was included in the Senate's draft fiscal year (FY) 2023 Transportation, Housing and Urban Development, and Related Agencies (THUD) appropriations, which was released on July 27, 2022.

NAIHC is currently working to identify another must-pass bill to which this NAHASDA bill can be added to ensure passage in the Senate. If the Senate NAHASDA bill passes the Senate, it would still then have to pass the House. However, the House has expressed concerns with S. 2264. For example, the House leadership wants any NAHASDA bill to include language that targets five tribes ("Five Tribes") in Oklahoma (Cherokee Nation, Seminole Nation, Muscogee (Creek) Nation, Chickasaw Nation, and Choctaw Nation), withholding NAHASDA funding from the Five Tribes unless they provide housing assistance to Freedmen descendants.

The House NAHASDA bill, H.R. 5195, has one sponsor, Financial Services Committee Chair Maxine Waters (D-CA). This bill was not included in the House THUD appropriations. H.R. 5195 includes the following key provisions:

- Creating an Assistant Secretary for Indian Housing at HUD;
- Total Development Cost (TDC) allowances for energy efficiency upgrades;
- Five percent (5%) tribal set-aside for United States Department of Agriculture (USDA) programs;
- Making tribes eligible for HUD Housing Counseling grants;
- HUD-VASH provisions;
- Exemption from the Flood Insurance Program; and
- Providing for tribal court jurisdiction over Section 184 loan foreclosures.

However, H.R. 5195 also contains concerning provisions that NAIHC does not support. First, it caps the annual Indian Housing Block Grant Program (IHBG) appropriations at \$680 million per year. This amount is lower than what the Biden Administration included in its budget proposal, and is of general concern because it could set what becomes perceived as a hard cap in subsequent appropriations cycles. Second, as discussed above, H.R. 5195 targets the Five Tribes, withholding NAHASDA funding unless they provide housing assistance to Freedmen descendants.

Native American Rural Homeownership Improvement Act (NARHI Act). The NARHI Act has nine bipartisan cosponsors in the Senate (S. 2092) and three in the House (H.R. 6331). The NARHI Act would provide \$50 million from the USDA Single Family Home Loan Program

to Native Community Development Financial Institutions (CDFIs) to provide home loans in tribal communities. It would also expand a demonstration project currently operating only in South Dakota. To prioritize lending on trust land, it would waive the 20% match requirement for loans on tribal land. In addition, it authorizes an operating grant for Native CDFIs who relend under this program and appropriates \$1 million annually for technical assistance to Native CDFIs. The bills were introduced in June 2021, and there were subcommittee hearings in July 2021 and February 2022.

Tribal Trust Land Homeownership Act, S. 3381, would establish timelines for the Realty/Land Title process at the Bureau of Indian Affairs (BIA), and would create a Realty Ombudsman in BIA to hold BIA accountable for meeting these timelines. The bill has bipartisan support. There was a hearing in February 2022, and the bill was voted out of the SCIA in May, 2022.

Native American Direct Loan Improvement Act, S.4505. On July 12, 2022, Senator Mike Rounds (R-SD) introduced a bill involving the U.S. Department of Veterans Affairs (VA) Native American Direct Loan (NADL) program in the Senate. The NADL program allows eligible Native American Veterans to buy, build, or improve a home on federal trust land. The NADL may also be used to refinance an existing loan to reduce the interest rate. Last year, Senator Rounds requested a Report (#GAO-22-104627) by the U.S. Government Accountability Office (GAO) on the effectiveness of the NADL program, which can be found [here](#). The new bill addresses some of the issues found in the GAO Report and would provide funding for Native CDFIs to do more outreach for the program to increase veteran participation. Additionally, the bill would adopt the relending model through Native CDFIs, which would provide Native CDFIs with more flexibility to use the funding in a way that fits Native communities. The next step is for the SVAC to report the bill out of SVAC to be considered by the full Senate, which will likely occur in September, 2022.

b. Budget and Appropriations

In March 2022, Congress passed and President Biden signed a \$1.5 trillion omnibus appropriations bill for FY 2022. This bill was the first major increase in IHBG funding in years. The IHBG formula was increased to \$772 million (almost 20% increase), and the IHBG competitive grant was increased to \$150 million. The bill largely mirrored the Biden Administration budget request (moving \$50 million from the IHBG competitive grant to the IHBG formula grant). Still, the appropriations have not kept up with inflation from the initial NAHASDA appropriations in 1996, meaning that while it does provide more money for tribal housing, that money has less purchasing power. It is also a smaller percentage overall of the HUD budget than in years past.

The Biden Administration released its FY 2023 budget in March 2022, and the numbers are nearly identical to the FY 2022 IHBG budget. The budget requests \$1 billion for tribal housing, including \$772 million for IHBG grants, \$150 million for IHBG Competitive grants, \$70 million for Indian Community Development Block Grant (ICDBG) Program grants, \$7 million for training and technical assistance (T/TA), and \$1 million for Title VI loan guarantees. The budget request also contains some additional provisions: a waiver of various housing nondiscrimination laws for

tribal continuum of care projects; inclusion of the USDA 502 Pilot; and \$14 million in funding for the BIA Housing Improvement Program (HIP).

On June 30, 2022, the House Appropriations Committee approved the draft FY 2023 THUD Appropriations Subcommittee bill. The bill proposes \$62.7 billion for HUD’s affordable housing, homelessness, and community development programs, which is a \$9 billion (or 17%) increase over FY22-enacted levels. Below is a breakdown of how the House draft THUD bill compares to the Senate draft THUD bill.

House THUD	Senate THUD
<p>\$1 billion – Total for Tribal Housing</p> <ul style="list-style-type: none"> • \$772 million – IHBG • \$150 million – IHBG Competitive • \$70 million – ICDBG • \$7 million – Training/TA • \$1 million – Title VI Loan Guarantees 	<p>\$1.052 billion – Total for Tribal Housing</p> <ul style="list-style-type: none"> • \$819 million – IHBG • \$150 million – IHBG Competitive • \$70 million – ICDBG • \$7 million – Training/TA • \$1 million – Title VI Loan Guarantees

c. HUD Funding Opportunities Update

The FY 2022 IHBG formula grant final amounts have been posted and grantees should be receiving grant agreements soon. The FY 2023 IHBG grant estimates was posted June 1, 2022.

The FY 2022 IHBG competitive grant provides up to \$5 million per grant. This year, there will be \$130 million available nationally, so tribes and TDHEs are encouraged to apply for this funding, even if they already have an IHBG grant. Awards will range from \$500,000 to \$7,500,000. Applications, to be submitted through [grants.gov](https://www.grants.gov), are due by **November 17, 2022**.

On July 29, 2022, HUD issued a Notice of Funding Opportunity (NOFO) to invite applications from eligible applicants for the ICDBG grant program. HUD will award approximately \$92 million for the ICDBG Program. Awards will range from \$500,000 to \$7,500,000. Applications are due no later than **October 24, 2022**.

The FY 2021 ICDBG-ARP grant has been fully awarded, with around \$280 million being awarded out to tribal housing programs. The IHBG-ARP grant provided \$450 million through the American Rescue Plan (ARP). HUD ONAP required tribes to submit Abbreviated Indian Housing Plans (AIHP) to HUD to access supplemental funding. As of May 6, 2022, over 330 AIHPs were submitted, consisting of \$20 million of IHBG-ARP funds. Tribes and TDHEs had until July 5, 2022 to submit the AIHPs. The American Rescue Plan implementing statute allows HUD to move unused IHBG-ARP funds to the ICDBG-ARP program. Approximately \$20 million remains and HUD has indicated it started to move these funds to the ICDBG-ARP grant program after July 5, 2022.

The HUD Continuum of Care (CoC) Program is designed to empower and engage with communities to end homelessness HUD Continuum of Care. The deadline to apply for FY 2022 CoC Annual Program Funding is **September 30, 2022**. Through a special Notice of Funding

Opportunity (“Special NOFO”) under the CoC Program, HUD recently released resources to address unsheltered homelessness and homeless encampments, including funds set aside specifically to address homelessness in rural communities. The funding under the Special NOFO is intended to enhance communities’ capacity to effectively address unsheltered homelessness by connecting vulnerable individuals and families to housing, healthcare, and supportive services. CoCs will have the opportunity to submit projects for two funding opportunities through this Special NOFO: (1) Unsheltered Homelessness Set Aside and (2) Rural Set Aside. Applications for the Special NOFO are due to HUD on **October 20, 2022**. Additional information and the Special NOFO can be found [here](#).

II. Treasury Programs Update

a. ERA Program

As we have reported in prior memos, Tribes received an \$800 million set-aside from the ERA Program funds to assist eligible households who are facing eviction due to unpaid rents and utilities, or the inability to pay prospective rents and utilities. Under the Consolidated Appropriations Act, 2021, Treasury is required to recapture “excess funds” from amounts that grantees have “not obligated” from their initial ERA allocations. The statute required Treasury to begin recapturing these excess funds on September 30, 2021.

On July 18, 2022, Treasury released a “Notice Regarding Recapture and Reallocation of Tribal ERA1 Funds” (“Treasury Notice”) regarding the Treasury Emergency Rental Assistance Program (“ERA Program”). In the Treasury Notice, Treasury states that it has determined that it will not involuntarily recapture ERA funds from tribes or tribally designated housing entities (TDHEs), even if such funds may be considered “excess funds”. After August 19, 2022, Treasury will reallocate funds that tribes and TDHEs voluntarily return to Treasury. As of June 30, 2022, tribal ERA programs have spent \$411,607,397 out of \$800 million (51.5%).

The Treasury Notice specifically states that “any funds from the initial ERA1 disbursement (not including funds received through reallocation) that are unobligated on September 30, 2022 must be returned to Treasury at that time. This is a statutory requirement, and Treasury cannot provide flexibility on this deadline.” The Treasury Notice further states that tribes and TDHEs may be permitted to use reallocated funds through December 29, 2022, if the funds qualify for this 90-day extension. Treasury will provide guidance on the extension in the future.

ERA Program funds remain available to provide financial assistance and housing stability services to eligible households only through **September 30, 2022**. According to a Dear Tribal Leader Letter (“[Treasury DTLL](#)”) that Treasury published on June 8, 2022, Treasury emphasized that financial assistance payments may cover only rent, utility and home energy expenses, rental or utility and home energy costs arrears, or other expenses related to housing arising before that date. Tribes and TDHEs may not provide prospective rental or utility assistance or cover costs for other expenses related to housing, or for housing stability services, for any period beyond September 30, 2022. Please note that we are attempting to persuade Treasury to change its position on this issue. However, funds can be used for administrative expenses beyond the September 30, 2022 deadline.

Further, Tribes that receive reallocated funds have until December 29, 2022 to spend those reallocated funds. When a tribe submits a request for reallocated funds, Treasury will automatically provide an extension. One participant commented that they have received a reallocation from Treasury, as well as a notice indicating that if they received a reallocation, they automatically would receive an extension until December 29, 2022 to spend those funds.

Another participant suggested that tribes may be uninclined to request reallocated funds because if they do so, they would only have a short timeframe during which they can spend those funds. Another participant stated that they communicated with Senator Rounds concerning the extension of the deadline to spend ERA Program funds. He reported that the Senate Banking Committee was receptive and indicated that they will be looking into adding a provision to the Continuing Resolution that would extend the deadline.

NAIHC is working on efforts to extend the deadline to spend ERA Program funds, including advocating to Congress on the importance of this extension. NAIHC has drafted letters, available at this [link](#), that tribes can use to send to their own members of Congress.

The Treasury DTLL also provides some initial guidance on timing related to closeout activities for the ERA Program. The Treasury DTLL states that tribes and TDHEs “must submit all final financial, performance, and other reports as required by the ERA1 Award Terms no later than 120 calendar days after the end date of the period of performance.” Further, tribes and TDHEs “may only charge administrative costs to the ERA1 award after September 30, 2022 (or December 29, 2022 for reallocated funds upon the grant of an extension) for award closeout activities, such as preparation of final financial and performance reports.” Treasury has indicated that it will release further closeout guidance in the coming months.

NAIHC hosted a webinar on June 1, 2022 that outlines the various ERA Program timeframes and procedures. The webinar can be found on NAIHC’s YouTube page.

b. HAF Program

The American Rescue Plan Act of 2021 (ARPA) provides approximately \$498 million in funding to tribes for the HAF Program. This Program provides mortgage assistance to homeowners to prevent the foreclosure or post-foreclosure eviction of a homeowner due to the COVID-19 pandemic. Funding for the HAF Program is allocated through the Treasury for distribution. Allocations are based on the IHBG formula for FY 2021.

Tribes or Tribally Designated Housing Entities (TDHEs) that wished to receive HAF funding were required to submit a Notice of Request for HAF funding by December 15, 2021. At least half of the tribes have now received Treasury approval of their HAF plans. As of September 1, 2022, over 131 tribes have received HAF plan approval and funds.

One participant asked whether Treasury plans to reallocate unused HAF funds. Mr. Walters responded that he has not yet seen any Treasury guidance related to reallocations of HAF funds but will look into it.

NAIHC has training funds available for both the ERA Program and HAF Program. The application form for these training funds is available by contacting training@naihc.net. NAIHC is also launching a new [webpage](#) to help Native homeowners find ERA Program and HAF program resources [website](#).

c. Coronavirus State and Local Fiscal Recovery Funds

ARPA authorized the Coronavirus State and Local Fiscal Recovery Funds (SLFRF), which provides \$350 billion in assistance to state, territory, local, and tribal governments, of which \$20 billion is reserved for tribal governments. Treasury has released updates to the [frequently asked questions](#) (FAQs) of the SLFRF Final Rule.

The updated FAQs include a number of new and revised FAQs. In particular, FAQs 2.14 and 4.9 have been updated to enable state, local, and tribal governments to use SLFRF funds for the full value (including the principal) of long-term affordable housing loans including low-income housing tax credit (LIHTC) loans. Those FAQs also expand presumptively eligible uses for affordable housing. Specifically for Tribal governments, affordable housing projects are eligible uses of SLFRF funds if they would be eligible for funding under the IHBG program, the ICDBG program, or the BIA HIP.

Additionally, Treasury will be releasing an [Affordable Housing How-To Guide](#), a simplified summary of SLFRF guidance on affordable housing and examples of how recipients can layer funds with federal resources. Treasury will release details for webinar briefings on the final rule FAQs, including one specifically on affordable housing development, in the following weeks. For overall information about the program, see Treasury's websites on the SLFRF, [here](#). For general questions, please email SLFRF@treasury.gov.

d. Local Assistance and Tribal Consistency Fund (LATCF)

The LATCF provides \$2 billion to eligible tribal governments and revenue sharing counties as a general revenue enhancement program, with allocations based on a recipient's economic conditions. LATCF monies are distributed in two (2) tranches, for each of fiscal years (FY) 2022 and 2023. For tribal governments, the LATCF sets aside \$250 million for each FY 2022 and 2023, for a total set aside of \$500 million. The purpose of the LATCF is to provide support for general revenues for costs incurred by the recipient on or after March 15, 2021.

Recipients have broad discretion on the use of LATCF monies and are permitted under statute to use the monies for "any governmental purpose" other than lobbying activities. Eligible uses include those services and expenditures traditionally provided or made by a government (including, e.g., the provision of health and education services, capital expenditures in infrastructure and land, and investments in activities undertaken by tribal enterprises). Treasury does not pre-approve proposed projects, and thus there is no requirement that recipients send proposed projects to Treasury for approval.

Tribes must expend and account for expenditures in accordance with applicable procurement laws that apply to the tribe's expending of and accounting for its own funds. The Build America, Buy America Act (BABAA) generally applies to expenditures funded by LATCF monies. However, BABAA does not apply, however, to (1) non-infrastructure projects or (2) infrastructure expenditures undertaken in response to the COVID-19 public health emergency or in response to, or preparation for, other major disasters or emergencies declared by the President under the Stafford Act.

Treasury has requested a waiver of the BABAA's application to the LATCF program. Until that waiver is approved by the Office of Management and Budget (OMB) (which entails a public comment process), however, distributions of LATCF funds will be subject to the BABAA.

Allocation and disbursement of funds. Ninety percent (90%) of the funding allocation is based on pro-rata shares of tribal enrollment, and 10% is based on "banded" employment per capita.¹ Both portions of the allocation are based on tribally self-reported data. There is a maximum allocation of \$3 million per FY 2022/2023 per tribal government (i.e., \$6 million total), and a minimum of \$50,000 per FY 2022/2023 for tribes with enrollment of 30 or greater (i.e., \$100,000 total) and \$25,000 per FY 2022/2023 for tribes with enrollment of below 30 (i.e., \$50,000 total).²

The first disbursement of LATCF monies will be made available immediately to tribes as they apply. The second tranche of funding will be disbursed in FY 2023, and Treasury will release more guidance on the FY 2023 distributions.

Eligible recipients. Eligible tribal governments are defined similarly as the ARP Act's State and Local Fiscal Recovery Funds (FRF) program. Eligible tribal governments include the recognized governing bodies of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation individually identified (including parenthetically) in the list published most recently as of the date of the ARP Act's enactment in the Federal Register.

Applying for funds. As of July 29, 2022, tribes are able to view and apply for their FY 2022 allocation by accessing Treasury's Submission Portal. Tribe, in addition to viewing their FY 2022 allocation, will also be able to see their anticipated total allocation in the Portal.

Deadline to request funds. Eligible tribal governments must request payment of their FY 2022 allocation through Treasury's Submission Portal by **October 31, 2022, 11:59 PM AKDT.** **If a tribe does not request funding by this deadline, it will be ineligible to receive both its FY 2022 and 2023 allocations of LATCF monies.** Unclaimed FY 2022 allocations (i.e., FY 2022 allocations for tribes that do not apply by the deadline) will be added to the total FY 2023 funding

¹ Tribes are sorted into five (5) groups based on their enrollment-to-employment ratio, and those tribes with lower enrollment-to-employment ratios (i.e., experiencing higher rates of unemployment per capita) will receive a proportionally higher per-capita allocation. Additionally, the presenters stated that "employees" of a recipient tribe do not include employees of consortia operated in conjunction with other tribes.

² Tribes can consult Treasury's "Summary of Allocation Methodology" guidance document, linked [here](#).

pot for tribes that did apply by the October 31, 2022 deadline. Further information can be found [here](#).

III. Other Matters

a. NAIHC Legislative Conference and Legislative Committee Meetings

The annual NAIHC Legislative Conference will be held in person in Washington, DC on September 19–21, 2022. During the Legislative Conference, NAIHC will help set up meetings between tribes and members of Congress. Registration for the conference is open and accessible at this [link](#).

The NAIHC Legislative Committee meetings will continue to be held the first Thursday of each month on a videoconference platform. The next meeting will be held in person during the NAIHC Legislative Conference on September 19, 2022. Anyone who would like to submit questions prior to the calls may do so through the link provided in the NAIHC email sent out prior to each call. Sending in questions and comments ahead of time allows NAIHC to provide detailed responses during the call. Participants can reach out to NAIHC staff with any questions or comments by sending an email to Twalters@NAIHC.net.

b. Additional Monthly Forums and Other Updates

NAIHC will continue to hold additional monthly forums to focus on more in-depth conversations, which will be held on the second Wednesday of each month. The forums will cover a rotating discussion on a single topic. Currently, NAIHC is holding forums the three following topics: (1) Treasury programs; (2) HUD Continuum of Care; and (3) HUD Housing Counseling. NAIHC welcomes any other topics individuals would like covered during these monthly forums. NAIHC is also asking for volunteers to help lead discussions during the forums.

NAIHC will continue to provide virtual and in-person training and technical assistance. NAIHC sends out a Native housing newsletter every two weeks. Any tribe who does not currently receive the newsletter can go to the NAIHC website to sign up [here](#).

Conclusion

If you have any questions about this memorandum, please contact Ed Clay Goodman (egoodman@hobbsstrauss.com) or Cari Baermann (cbaermann@hobbsstrauss.com), or by phone at 503-242-1745.